

United States Department of Justice
National Security Division
Docket No. NSD 102
RIN 1105-AB67

Re: Clarification and Modernization of Foreign Agents Registration Act (FARA) Implementing Regulations

We are writing concerning the Department of Justice's Clarification and Modernization of Foreign Agents Registration Act (FARA) Implementing Regulations. Specifically, we are responding to the following prompts in your published notice:

Question 18: What changes, if any, should the Department make to its regulations to account for the e-File system that was adopted after the regulations were last updated in 2007?

Question 11: Should the Department include with its published Rule 2 advisory opinions the corresponding request, with appropriate redactions to protect confidential commercial or financial information, so that the public may better understand the factual context of the opinion?

Question 14: What changes, if any, should the Department make to the current regulation, 22 CFR 5.402, relating to labeling informational materials to account for the numerous ways informational materials may appear online? For example, how should the Department require conspicuous statements on social media accounts or in other communications, particularly where text space is limited?

Question 16: Should any changes to regulations relating to the labeling of "televised or broadcast" informational materials also address audio and/or visual informational materials carried by an online provider? And, if so, should the regulations addressing labeling of such audio and/or visual information materials be the same as for televised broadcasts or should they be tailored to online materials; and, if so, how?

Background

The collection and disclosure of information under FARA is the subject of sustained public interest. We believe additional steps should be undertaken to modernize the implementation of FARA so that it satisfies the purpose of the statute—facilitating the evaluation by the government and the American people of the statements and activities of agents of foreign principals—in our modern digital context. These steps should be memorialized in the Department's FARA regulations.

Our recommendations are based on our experiences using FARA, including efforts by three organizations to republish FARA data online in ways that support greater access and sophisticated analysis.

- The Project on Government Oversight (POGO) built the Foreign Influence Database, containing informational materials filed between 2009 and 2012.¹
- The Sunlight Foundation built an online tool, the Foreign Influence Explorer, that contained historic data between 2008 and 2013 and some more current information. (Sunlight's tool was built in collaboration with ProPublica.)
- OpenSecrets took over Sunlight's project and recently unveiled Foreign Lobby Watch in 2018. Its researchers manually calculate total receipts reported by registrants in question 14(a) of supplemental statements on a daily basis while maintaining a database of standardized registrants,² foreign principals³ and locations.⁴ OpenSecrets has tallied more than \$4.2 billion in spending reported as receipts in supplemental statements spanning over nearly two decades⁵ and also parses the PDF text of each filing to allow for full-text searching.⁶

POGO and the Sunlight Foundation have issued reports with recommendations on how FARA should be improved. The Sunlight Foundation report⁷ focuses on how the DOJ should fix the FARA website, which is broken in many different ways, and also release the data in a structured format. POGO's report, *Loopholes, Filings Failures, and Lax Enforcement*,⁸ does a deep dive into the lobbying data and highlights the failings of FARA and how it is enforced, with recommendations on how the underlying law should be changed. Those recommendations and additional calls for updates are summarized in the article "Tracking Lobbying by Foreign Governments,"⁹ published by Demand Progress.

We also note the September 2016 Justice Department Inspector General report "Audit of the National Security Division's Enforcement and Administration of the Foreign Agents Registration Act,"¹⁰ which included fourteen recommendations to improve NSD's enforcement and administration of FARA. In particular, see the Inspector General's comment with regard to e-filing:

¹ Archived at:

<https://web.archive.org/web/20180117020135/http://www.pogo.org/tools-and-data/foreign-influence-database/>

² <https://www.opensecrets.org/fara/registrants>

³ <https://www.opensecrets.org/fara/foreign-principals>

⁴ <https://www.opensecrets.org/fara/countries>

⁵ <https://www.opensecrets.org/fara/>

⁶ <https://www.opensecrets.org/fara/background>

⁷ https://docs.google.com/document/d/19S-UJNx2KyJLOBRQA8P_jUbiPV1zIS1GZR7MgBRaD38/edit

⁸ <https://www.pogo.org/report/2014/12/loopholes-filing-failures-and-lax-enforcement-how-foreign-agents-registration-act-falls-short>

⁹ <https://medium.com/demand-progress/tracking-lobbying-by-foreign-governments-a8d870a12c95>

¹⁰ <https://oig.justice.gov/reports/2016/a1624.pdf>

“We continue to believe that e-file presents opportunities to better manage and ultimately improve registrant timeliness, and recommend that e-file develop with timeliness as a consideration.”

Recommendations

Question 18: What changes, if any, should the Department make to its regulations to account for the e-File system that was adopted after the regulations were last updated in 2007?

We are addressing this recommendation first because we believe that the most important update to the regulations should be an explicit requirement that all information be submitted and downloadable in a machine readable format. This would increase the utility and accessibility of the information.

The current e-filing system requires filers to submit data in either image or PDF formats. Yet, much of the supplemental, registration, and amendment information is originally produced in electronic formats, such as CSV files. Image and PDF formatted files destroy critical aspects of the included data, and cannot be marked for sensitive information or be used for automated calculations. It is virtually impossible to transform a PDF into a structured spreadsheet that supports analysis and reuse of the information.

Users should be required to submit information in structured data formats. FARA should provide a sample template that would allow registrants to standardize their responses in formats that could easily be processed by computers. This would allow for easy processing of data by the FARA Unit, faster review, and more uniform reporting. Examples of problems that would be ameliorated by this change:

- Prevention of accidental release of sensitive personal information, such as bank account numbers and judicial death notices;
- Prevent submission of inaccurate reports to Congress caused by miscalculations or incomputable data;
- Datasets (spreadsheets) broken up over multiple pages, that must be then taped together.

Structured data yielded from e-filing could optimize this process, improving the quality, utility, and clarity of information collected by the FARA Unit. Structured data would also enable federal officials to more efficiently identify potential issues with filings as they come in or even set automated detection systems.

Registrants working on behalf of foreign principals are only required to file a supplemental statement every six months and registrants often wait even longer so reported dates of receipt can sometimes occur in a different year than the work happened.

Structured data on the payment amounts registrants report in question 14(a) of the supplemental statement shows when the payments actually took place rather than just the date at the end of the reporting period covered by the supplemental statement. This would ensure totals reflect amendments or retroactively filed supplemental statements that may be filed after the Report to Congress covering a period is compiled would allow for a more complete and accurate picture of activities reported under FARA. Sometimes amendments result in a lower amount of spending being reported than was in the initial supplemental statement and other times additional previously unreported spending is reported so it could cause differences in both directions.

Cataloging information about the purpose of receipts or disbursements in the structured data would streamline extrication of activities required to be reported under FARA from any non-FARA registerable activities that may also be included in a filing.

While it is a simpler system, by way of comparison, new registrations under the Lobbying Disclosure Act must be filed to Congress electronically, are published as structured data, and made available to the public.¹¹ More parity between disclosure requirements under the Lobbying Disclosure Act and FARA is necessary to ensure at least the same level of transparency from lobbyists representing foreign interests as domestic.

We recognize that, with respect to supplemental information, the FARA Unit may have concerns about information security. A computer virus can hide inside most types of file formats (including the popular PDF and DOCX). When accessing those files, it is important to have an up-to-date virus scanner. However, there are file formats, known as “plain-text,” that are generally recognized as safe. For spreadsheets, this includes files in CSV (comma-separated value) format. For documents, this includes documents in TXT format. In addition, generating spreadsheets as CSV files, and documents as TXT files, is widely supported across many platforms, including Microsoft Office and Google Docs, so it is easy for submitters to generate the files in the required format. In addition, problems of incomplete and inaccurate data can be addressed through use of better formats in which the data is filed, including the use of forms that ensure that users file valid information.

Examples:

- Totals of a filer’s income and spending could be generated automatically.
- Registrants may indicate on a form that they have included an attachment, but then failed to submit the file. In those circumstances, registrants could be reminded to attach the file prior to submission.

¹¹ <https://lobbyingdisclosure.house.gov/faq.html>

The regulations should require the regular publication of FARA data in machine readable format or expansion of the FARA.org API to include access to supplemental statement as well as registrant data and, ideally, standardized data from amendments.. Furthermore, we suggest that the DOJ do proactive outreach to and engagement with the public and other federal entities that manage lobbying, campaign, ethics-related information concerning how best to make the user interface and the data more efficient and useful from the point of view of the public and of integrating the various datasets together.

Additionally, the regulations should encourage the increased use of unique or common identifiers to represent data, and wherever possible draw the identifiers from unique IDs used by other government entities or create crosswalks.¹² This allows for the interoperability of data, but also allows for the FARA Unit to validate the data upon entry and mechanically compare it to prior entries. Adding additional IDs may sound like it is harder on registrants, but if the system takes advantage of an API driven architecture and takes advantage of open data, it will increase consistency and accuracy, while making the process easier on the filer.

For example the following unique identifiers should be used:

- Donations to campaign committees should use the FEC identifier on supplemental question 15(c) and short form question 15.¹³
- Specific contacts with members of Congress (often reported in the supplemental, usually as an attached document)¹⁴ should use the congressional bioguide IDs¹⁵ and common ID for the committees.¹⁶

¹² This information is available from official sources inside Congress. Outside entities, like the Congressional Data Coalition, may also help you locate this data.

¹³ Campaign committee information is published by the FEC here.
<http://www.fec.gov/data/CommitteeSummary.do?format=html>

¹⁴ For an example of a supplemental, see
<https://www.fara.gov/docs/3492-Supplemental-Statement-20160129-25.pdf>

¹⁵ The bioguide IDs are officially published at <http://bioguide.congress.gov/biosearch/biosearch.asp>. GovTrack publishes the Bioguides as a spreadsheet file at <https://www.govtrack.us/data/congress-legislators/legislators-current.csv> for current members and <https://www.govtrack.us/data/congress-legislators/legislators-historic.csv> for former members. That information is also available via API from Govtrack at <https://www.govtrack.us/developers/api> and ProPublica at <https://www.propublica.org/datastore/api/propublica-congress-api>. The Bulk Data Task Force, led by the Deputy Clerk of the House of Representatives, Robert Reeves, may be an invaluable point of contact for the ongoing work inside the House, Senate, Office of Legislative Counsel, Government Publishing Office, Library of Congress, and elsewhere

¹⁶ The FEC publishes FED committee IDs at https://api.open.fec.gov/developers/#!/committee/get_committees. General information is at <http://fec.gov/data/DataCatalog.do?cf=downloadable>, which also is published via API at <https://api.open.fec.gov/developers/>. There is also a typeahead integration where partial names can generate suggestions with standardized committee names and committee ids, available at https://api.open.fec.gov/developers/#!/search/get_names_committees.

- Bills should use a common format.¹⁷

Question 11: Should the Department include with its published Rule 2 advisory opinions the corresponding request, with appropriate redactions to protect confidential commercial or financial information, so that the public may better understand the factual context of the opinion?

Additional transparency is always welcome. In a recent report, the Senate Select Committee on Intelligence recommended that:

DOJ should publish comprehensive public guidance on FARA. In part as a result of limited enforcement, the public has insufficient information about the statute's scope and application. DOJ's interpretation of the statute is largely untested and undefined. While DOJ has made efforts to publish more information about its interpretation of the statute, including through the publication of advisory opinions, these are overly redacted and incomplete. Comprehensive public guidance has been beneficial for other similarly situated statutes, and those publications, such as DOJ's Resource Guide to the US Foreign Corrupt Practices Act, may serve as a helpful model in issuing useful and practical guidance on FARA.¹⁸

We agree that having greater context around Rule 2 advisory opinions will help the public to more robustly evaluate the advisory opinions. Understanding the genesis of these opinions, including the specific situations from which they arise, will help to guide not only public evaluation, but may also help to eliminate redundant, or near redundant advisory opinion requests. Potential filers can review all materials and be more informed about their filing obligations.

Question 14: What changes, if any, should the Department make to the current regulation, 22 CFR 5.402, relating to labeling informational materials to account for the numerous ways informational materials may appear online? For example, how should the Department require conspicuous statements on social media accounts or in other communications, particularly where text space is limited?

This portion of the regulations should specifically reference online and digital materials. The regulations should include language that explicitly identifies social media posts, streaming media, electronic communications, podcasts and other audio, and online newsletters and blog posts, and all other digital media as included under this provision.

¹⁷ See, for example, the Government Publishing Office's User Guide that explains and implements common standards to describe legislation.

https://www.gpo.gov/fdsys/bulkdata/BILLS/resources/BILLS-XML_User-Guide-v2.pdf

¹⁸ United States Senate Select Committee on Intelligence, "Russian Active Measures, Campaigns, and Interference in the 2016 U.S. Election, Volume 5: Counterintelligence Threats and Vulnerabilities," 2020, at p. 932,

https://www.intelligence.senate.gov/sites/default/files/documents/report_volume5.pdf

Taking digital media into account is essential in order to modernize these regulations. There have been well-documented instances of foreign interests attempting to influence U.S. elections¹⁹ and politics²⁰ via online media. This has serious enough implications for U.S. democracy to justify a lengthy Congressional investigation and report by the United States Senate Select Committee on Intelligence.²¹ Among the Committee's recommendations is a statement that:

[A]ll U.S. media outlets should clearly label or otherwise identify content that appears in connection with FARA-registered work, even if it comes in the form of an opinion column. It is the ultimate responsibility of the editorial staff at U.S. media outlets to understand the origins of the information that their journalists and outside contributors are promoting, and to inform their audiences when that information is, in some way, sponsored or influenced by a foreign agent.

This requirement should be memorialized in the DOJ's regulations. We would recommend that "media" be defined to explicitly include online, streaming, and social media in this instance. It should be incumbent upon all publishers and distributors of information online - including social media companies and streaming platforms - to do due diligence to identify the origins of information being disseminated on their platforms and to appropriately notify the audience if political or advocacy messages are being pushed by foreign interests.

The mechanism of the conspicuous statements would vary according to the media. For streaming media, including video and audio, the conspicuous statements should be required at the beginning and end of all media²². For social media accounts, conspicuous statements should be included in the user profile and in all posts (including replies or comments posted on others' social media accounts).²³ For written digital media - including blog posts, newsletters, or mass email communications - conspicuous statements should be included at the beginning and conclusion of the post and in any byline, signature block, or biographical information about the writer.

¹⁹Sheera Frenkel and Julian E. Barnes, "Russians Again Targeting Americans With Disinformation, Facebook and Twitter Say," NY Times, Sept. 1 2020, <https://www.nytimes.com/2020/09/01/technology/facebook-russia-disinformation-election.html>

²⁰ Stanford University, Virality Project (Russia), "Penguins and Protests," June 9, 2020, <https://fsi.stanford.edu/news/penguins-and-protests-rt-and-coronavirus-pandemic>

²¹ United States Senate Select Committee on Intelligence, "Russian Active Measures, Campaigns, and Interference in the 2016 U.S. Election, Volume 5: Counterintelligence Threats and Vulnerabilities," 2020, at p. 933, https://www.intelligence.senate.gov/sites/default/files/documents/report_volume5.pdf

²² See e.g. Ciaran O'Connor, "How TikTok Sounds Are Used to Fuel Anti-Vaccine Fears," Institute for Strategic Dialogue, July 12, 2021, https://www.isdglobal.org/digital_dispatches/how-tiktok-sounds-are-used-to-fuel-anti-vaccine-fears/

²³ For some formats, this will be easier than others (for example, a Facebook post is not character limited, but a Twitter post is). It may be useful to require that social media platforms like Twitter, which limit characters, adopt something similar to Twitter's "verification" blue check system, where accounts associated with foreign agents are denoted with a symbol, which is then visible in all future posts)

Question 16: Should any changes to regulations relating to the labeling of “televised or broadcast” informational materials also address audio and/or visual informational materials carried by an online provider? And, if so, should the regulations addressing labeling of such audio and/or visual information materials be the same as for televised broadcasts or should they be tailored to online materials; and, if so, how?

Yes. There were an estimated 120 million podcast listeners in the United States in 2021.²⁴ Recent polling suggests that more than a quarter of the time Americans spend watching TV is spent watching streaming services²⁵ - and that number does not even account for time spent streaming video on other devices, like tablets or smartphones. Regulations should require at least the same level of notification for streaming media as they do for traditional televised/broadcast media, if not more. Given the possibility of virality - which was not possible under old broadcast and televised media - streaming media (including both streaming audio and video) should be required to have notifications at the beginning and end of the media and to the extent possible infuse it into the content should it be shared out of context.

Conclusion

In order to modernize DOJ’s FARA regulations, it is essential that data be added and proactively disclosed in a machine readable format. It is also essential that readers be given more context regarding Rule 2 Advisory Opinions. And the regulations should explicitly require conspicuous statements on all online media and should require that distributors of online media do due diligence to identify the origins of content posted on their platforms.

Sincerely,

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²⁴ Statistica, <https://www.statista.com/topics/3170/podcasting/#dossierKeyfigures>

²⁵ Jessica Bursztynsky, “About one-quarter of U.S. TV time is spent watching streaming services, says Nielsen,” CNBC, June 17, 2021, <https://www.cnbc.com/2021/06/17/nielsen-streaming-makes-up-only-26percent-of-time-spent-in-front-of-tv.html>